

When a motor vehicle is returned for a refund of the purchase price under the New Vehicle Buyer Protection Act, the Department can issue a credit memorandum or a refund for the amount of tax paid attributable to the initial sale of that vehicle, but only to the retailer, not the manufacturer. See 86 Ill. Adm. Code 130.1501. (This is a GIL.)

April 26, 2004

Dear Xxxxx:

This letter is in response to your letter dated July 16, 2003, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at [www.ILTAX.com](http://www.ILTAX.com) to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

I am writing to you on behalf of ABC. My questions pertain to submitting a refund claim for sales tax on vehicles, which we repurchased or replaced pursuant to the Lemon Law program. Since every state is different, I wanted to obtain specific guidelines and requirements for your state prior to submitting a refund claim. I have listed the specific questions that I have below:

1. What type of form (number) would we need to use when submitting a claim for sales tax refund in your state?
2. Can we (the manufacturer) submit a refund claim on the tax that was refunded to the customer, or must the dealer handle this?
3. What type of documents would you need from ABC in order to process the refund claim? (i.e. buyer's order/sales contract for original/replacement vehicle, repair orders, copies of checks)
4. Is there a specific time or statute of limitations period in which the claim would need to be filed? (i.e. 3 years)
5. Are we able to submit a refund claim on vehicles where we either repurchased or replaced the vehicle?

6. Can it be submitted for vehicles that were leased as well as those being financed?

I thank you in advance for your timely response and attention to my request.

### **Department's Response:**

This response assumes that the repurchase or replacement of vehicles by your company "pursuant to the Lemon Law program" is done in a manner similar to that required under Illinois' New Vehicle Buyer Protection Act (815 ILCS 380/1 et seq.). This response addresses your questions in the order that you asked them:

1. Assuming that sales tax (Retailers' Occupation Tax) was remitted using a form ST-556 (Sales and Use Tax), you must file form ST-556-X to claim a refund of the sales tax paid. Forms and instructions can be found on our website.
2. Section 6 of the Retailers' Occupation Tax Act provides that "[f]or purposes of this Section, the tax is deemed to be erroneously paid by a retailer when the manufacturer of a motor vehicle sold by the retailer accepts the return of that automobile and refunds to the purchaser the selling price of that vehicle as provided in the New Vehicle Buyer Protection Act. When a motor vehicle is returned for a refund of the purchase price under the New Vehicle Buyer Protection Act, the Department shall issue a credit memorandum or a refund for the amount of tax paid by the retailer under this Act attributable to the initial sale of that vehicle. Claims submitted by the retailer are subject to the same restrictions and procedures provided for in this Act." 35 ILCS 120/6. See also subsection (a)(1) of 86 Ill. Adm. Code 130.1501 (found on our website under "Legal Research" – "Regulations").

The Department is only authorized to provide a credit memorandum or refund of sales tax to the retailer who made the initial sale of the vehicle. The Department cannot approve a claim for credit or refund from the manufacturer when it accepts the return of an automobile and refunds to the purchaser the selling price of that vehicle as provided in the New Vehicle Buyer Protection Act. Once the retailer's claim for credit or refund is approved, the benefit derived by the retailer from the credit or refund is a private contractual matter between the retailer and the manufacturer.

3. The information and materials required to be submitted along with a claim for credit are listed in subsection (b) of 86 Ill. Adm. Code 130.1501.
4. The statute of limitations for filing a claim for credit can be up to 3½ years, unless extended by agreement between the Department and the taxpayer. See subsection (a)(4) of 86 Ill. Adm. Code 130.1501.
5. While Section 3 of the New Vehicle Buyer Protection Act allows for a refund or replacement of a vehicle, both Section 6 of the Retailers' Occupation Tax Act and the rules adopted pursuant to that Section under Section 130.1501 of Title 86 of the Illinois Administrative Code limit the grounds for a credit against tax paid to situations where a refund is provided for the vehicle.
6. While Section 3 of the New Vehicle Buyer Protection Act allows for a refund of the costs of the lease of a vehicle, both Section 6 of the Retailers' Occupation Tax Act and the

rules adopted pursuant to that Section under Section 130.1501 of Title 86 of the Illinois Administrative Code limit the grounds for a credit against tax paid to situations where the vehicle is sold. It should be noted that, in Illinois, persons who, under bona fide agreements, rent or lease the use of automobiles under lease terms of more than one year to others are, to this extent, not engaged in the business of selling tangible personal property to purchasers for use or consumption within the meaning of the Retailers' Occupation Tax Act and are not required to remit Retailers' Occupation Tax measured by their gross receipts from such transactions. (86 Ill. Adm. Code 130.2010) As a result, lessees cannot obtain refunds as described above.

I hope this information is helpful. If you require additional information, please visit our website at [www.ILTAX.com](http://www.ILTAX.com) or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Sincerely,

Samuel J. Moore  
Associate Counsel

SJM:msk